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IN THE
Supreme Court of the United States

HENRY MONTGOMERY,
Petitioner,

v.

STATE OF LOUISIANA,
Respondent.

On Writ of Certiorari to the Louisiana Supreme Court

BRIEF OF *AMICI CURIAE* OF CERTAIN FAMILY MEMBERS OF VICTIMS KILLED BY YOUTHS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI*[1]

Amici, some of whom submitted testimonials as *amici* in *Miller v. Alabama*, 567 U.S. __ (2012), are individuals who lost family members and friends to murder committed by children, yet who support the retroactive application of *Miller*. *Amici* believe that the values of mercy and redemption that their loved ones embodied require that all children sentenced to life without parole be given an opportunity to demonstrate their capacity to mature, to understand the value of human life, to show remorse, and to become positive contributors to society — regardless of whether they were convicted before or after this Court's decision in *Miller*. While their experiences differ, *Amici* are united in their belief that the lives of their loved ones are not honored by a criminal sentence that forecloses redemption and imposes endless punishment by failing to provide any opportunity for review to children sentenced to mandatory life without parole.

SUMMARY OF ARGUMENT

Amici support the retroactive application of *Miller v. Alabama*, 567 U.S. __, 132 S.Ct. 2455 (2012). Specifically, *Amici* seek the application of *Miller's* prohibition of mandatory life sentences

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici*, or their counsel, made a monetary contribution intended to fund its preparation or submission. The parties have filed blanket waivers with the Court consenting to the submission of all *amicus* briefs.

without parole to youth who were sentenced prior to the Court's 2012 decision. Just as the mandatory life sentence imposed on Kuntrell Jackson for a 1999 murder and on Evan Miller for a 2003 murder were unconstitutional, so too was the mandatory life sentence imposed on child offender Henry Montgomery for a 1963 murder. *See, e.g., id.* at 2460.

Amici have experienced the indescribable pain of losing a loved one to murder – a pain that never goes away. While the lives of their loved ones cannot be restored, those lives can be honored by those who survive and remember them. *Amici* believe that failing to provide children sentenced to mandatory life without parole an opportunity for review dishonors, rather than honors, the memories of their loved ones. The mandatory life without parole sentences imposed on children before *Miller* do not provide "closure" to the victims, for there is no such thing as "closure" in these circumstances. Rather, such a sentence only prolongs the agony of their grief by adding to the number of lives tragically lost.

Life without the possibility of parole is permanent retribution – an "eye-for-an-eye" punishment that belies everything *Amici*'s loved ones stood for: mercy, fairness, and redemption. Failing to apply *Miller* retroactively forecloses the possibility that these children can grow into mature adults who recognize the value of the lives they took, express true remorse for their actions, and prove themselves capable of returning to society and doing the good the murder victims can no longer do.

Applying *Miller* retroactively provides an opportunity for the real justice *Amici* hope to receive – the justice that will honor their family members.

ARGUMENT

I. VICTIMS' VOICES MUST BE HEARD.

We as a society — including within our justice system — must recognize the importance and diversity of the voices of those who have experienced the devastating loss of a loved one to youth violence.[2] Too often, there is an assumption that those who have lost a loved one uniformly desire the most severe punishment available. Yet this fails to take into account the voices of those who believe their loved ones will be honored best, not by throwing away a young person's life, but by affording a child who has committed murder the opportunity to demonstrate genuine remorse and change.

Amici therefore exercise their right to be heard in support of the retroactive application of *Miller*. Their stories begin with heartbreak and conclude with reconciliation, redemption, and rejuvenation. While, at first blush, it appears *Amici* are advocating for the children (now adults) who

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[2] For example, the right of allowing victims to be heard at sentencing has been recognized by the federal government and all 50 states. *See, e.g.*, 18 U.S.C. § 3771(a)(4)(identifying the federal "right to be reasonably heard at any public proceeding . . . involving release, plea, sentencing, or any parole proceeding."); Victoria Schwartz, Comment, *The Victims' Rights Amendment*, 42 Harv. J. on Legis. 525, 526 & n.13 (2005)(collecting citations of state laws).

murdered their loved ones, in fact, they are advocating for a way to honor their beloved deceased family members by upholding the values they held most dear.

II. FAILING TO APPLY *MILLER V. ALABAMA* RETROACTIVELY DISHONORS THE MEMORIES OF THE VICTIMS.

A. Retroactive Application of *Miller* Will Honor Victims' Lost Loved Ones by Affording Every Child Sentenced to Mandatory Life in Prison the Opportunity to Demonstrate Remorse, Redemption, and Rehabilitation.

Jeanne Bishop

Jeanne Bishop lost her younger sister, Nancy Bishop Langert, brother-in-law Richard Langert, and their unborn child on April 7, 1990. On that fateful night, Nancy and Richard encountered 16-year old David Biro. David had broken into their home and was lying in wait, holding a .357 magnum. David handcuffed Richard, led him and Nancy down into the basement, and shot Richard in the back of the head, killing him instantly. David then turned the gun on Nancy, who was huddled in a corner. He shot her twice in the abdomen before fleeing the home. Nancy crawled across the basement floor to a shelf, hitting it with a heavy tool in a futile attempt to make enough noise that someone would come help them. Fifteen minutes later, however, she and her unborn child were dead.

After a two-week trial, which Jeanne attended every day, the jury found David guilty in two hours. Because, at the time, the only possible punishment in Illinois for a double homicide committed by a child was mandatory life without parole, Jeanne and her family were precluded from giving a victim impact statement. Jeanne, based upon her faith, forgave David in her heart, but decided never to mention his name. Even though Jeanne opposed the death penalty, she initially was happy that David would be locked up forever. When *Miller* was decided, Jeanne realized David might be re-sentenced, and she was not sure how she felt about that prospect. As far as she knew, David was still remorseless. When a friend asked her how she knew that, Jeanne realized she did not know. After waiting more than 20 years, Jeanne decided to write David, telling him that she forgave him and was wrong for not telling him sooner. She also offered to visit him in prison. In response, Jeanne received a fifteen-page, double-sided letter from David a couple of weeks later. In his letter, David confessed to the crime for the first time, expressed his deep regret, and said, "I'm sorry."

On March 3, 2013, Jeanne met face-to-face with David for the first time in prison. She told him about the damage he had done to all of her family. As Jeanne watched David's reaction to her story she thought, "This is the best victim impact statement I could ever ask for He has to hear me."[3] Over the course of the last two years, Jeanne has visited

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[3] Jeanne Bishop, Change of Heart: Justice, Mercy and Making Peace with My Sister's Killer 122 (2015).

David in prison at least a dozen times. She says their relationship has grown into a strong, honest and respectful one. Importantly for Jeanne, each time she meets with David she tells him about her sister and brother-in-law. David told her that getting to know Jeanne and her family members makes him feel even more remorseful for the harm he caused. When he told her this, Jeanne realized that prison did not change David's heart – direct contact with Jeanne did: "This is a way of redeeming him."

Jeanne knows that many want to write off people like David because, in their mind, people like him can never change. But, she wonders "whether what we are truly afraid of is not that they will never get better, but that they might."[4] She is a fervent believer that every child who committed murder should have the opportunity to demonstrate remorse, rehabilitation, and the ability to return to society. "Our loved ones are not honored by mercilessly throwing a young person's life away." As such, Jeanne favors the retroactive application of the holding in *Miller*, not only to David, but also to others like David that have been serving life sentences for murders committed when they were children.

Barbara Henton

Barbara Henton is only alive today because, after being shot in the back, she played dead while two gunman continued on a shooting rampage,

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[4] *Id.* at 152.

killing her three friends. In 1978, at the age of 24, Barbara was at a friend's house playing cards when three individuals, Quincy Robinson, Norman Burton, and a 14-year old boy named Timothy Kincaid, burst through the front door. Barbara and one of her friends were shot immediately. Another friend jumped through a window and ran down the street – only to be chased down by Quincy and killed. Barbara's third friend ran into another room. Either Quincy or Norman handed a gun to Timothy and told him to kill her. Barbara saw the terror on Timothy's face. He tried to spare her friend's life by telling her to stay quiet while he shot the gun into the walls of the room in which Barbara's friend was hiding. Unfortunately, her friend did not play dead like Barbara did and either Quincy or Norman came back to the house and killed her.

Despite being paralyzed from the shooting, from the beginning, Barbara did not believe Timothy should be accountable for the murders committed by the two adults, as she believed he was as much of a victim as she was. Nevertheless, Timothy was tried and found guilty and sentenced to life without parole. Barbara was upset by the sentence and felt it was wrong.

In 2012, Barbara visited Timothy in prison for the first time. She describes their meeting as "good for both of us." They continue to email and exchange letters. Barbara describes Timothy as peaceful, kind and humble. He has repeatedly told her that he is sorry anything ever happened to her and her friends.

As a victim of the crime for which Timothy was convicted, Barbara wants her voice heard. Barbara adamantly believes that children should be given a second chance. She believes that *Miller* should be applied to Timothy's case – the case of a 14-year-old boy who tried to do the right thing and refused to kill when ordered to do so.

Sharletta Evans

Casson Xavier Evans was Sharletta Evans' younger son. On December 21, 1995, Casson was caught in the crossfire of a drive-by shooting, ending his life at the age of three. Sharletta had gone to her niece's house to pick up her niece's child. She left her sleeping younger son in the car with her six-year-old son and their older cousins. While inside her niece's house Sharletta heard gun shots and then broken glass. Once she accounted for the safety of everyone in the house, Sharletta returned to her car thinking nothing was wrong. But as she started to drive away, she realized Casson was bleeding and lifeless. He had been killed by a stray bullet.

Three teenagers were charged in the crime: Raymond Johnson, 14, was charged as the shooter; Paul Littlejohn, 15, was charged as the accomplice; and another 14-year-old boy was charged as the driver. Raymond and Paul were tried as adults, and Sharletta attended each day of the trials. Still in shock, overcome by grief, and perplexed as to how children so young could get access to guns and commit such a violent crime, Sharletta allowed her family speak for her at the trial and during sentencing. She did not question the District

Attorney's plan to use the boys "as an example." Raymond was sentenced to life in prison without the possibility of parole.

It was not until 11 years after Casson's murder and the receipt of several letters from Raymond and Paul that Sharletta was able to begin to correspond with them.

Sharletta knew that, in particular, Raymond, who fired the gun that killed Casson, had changed. At the time of his arrest, Raymond could read at less than a third-grade level. Both of his parents had abandoned him, forcing him to raise himself, with the help of grandparents. Over the years since the shooting, however, Raymond developed a faith in God, earned a GED, and kept a clean record in prison. Most importantly, he has expressed his remorse in his letters to Sharletta many times over the years since the shooting.

Sharletta founded the non-profit organization, Red Cross Blue Shield Gang Prevention Inc., to bring attention to restorative justice as a healing method, connecting victims of violence to their offenders in order to achieve forgiveness. Under most circumstances, Colorado state law prohibits contact between a convicted felon and his victim or a victim's family members. However, thanks to Sharletta's tireless advocacy, the Colorado Department of Corrections began a pilot program after passage of the Restorative Justice Law bill. Sharletta and her surviving son were the first victim's family to be accepted into the pilot program.

On May 23, 2012 Sharletta and her son, Calvin, met with Raymond Johnson face-to-face for the first time. She and Raymond remain in close contact, corresponding by letter and speaking by phone three times a week. She has taken on a motherly role for Raymond. Sharletta's close contact with Raymond led her to realize that she could not heal the open wounds from her son's death until she let the authorities know she wished her son's killers had a chance to redeem themselves. She has since asked for Raymond to be considered for another opportunity to return to society. Accordingly, Sharletta stands staunchly in support of the retroactive application of *Miller* to cases like Raymond's.

B. Victims' Experience with Reconciliation and Redemption Compels Their Support of the Retroactive Application of *Miller*.

Linda White

Linda White never imagined that she would become an ardent critic of the practice of sentencing youth to spend their lives in prison until her 26-year-old daughter, Cathy, was murdered by teenage boys on November 18, 1986. Gary was only 15 when he met Cathy, two months pregnant at the time, at a gas station in Houston. Gary and his friend asked Cathy for a ride out of town to help them escape abusive parents, and, moved by their plea, she let the boys into her car. After driving for some time, the boys brandished a gun and ultimately forced Cathy to pull over to the side of the road, where they

raped her. High and drunk at the time, the boys decided to disable Cathy (ostensibly to prevent her from calling the police) by shooting her in the leg. After the first shot, they reasoned that they would need to kill Cathy to eliminate the only witness to their crime. They shot her three times in the back of her head.

Days later, Gary and his friend were arrested, confessed to the killing, and led police to Cathy's body. Gary pled guilty and was sentenced to 54 years in prison.

Spurred by the unexpected death of her daughter, Linda began studying to become a death educator and grief counselor. She soon began conducting research into the theory behind prison sentences. Her research eventually brought her into direct contact with incarcerated individuals, where, for the first time, she interacted with people like Gary who were facing the bleak prospect of spending most of their lives behind bars. Linda grew increasingly convinced of the value of restorative justice, which treats crime as harm and aims to address the harm without causing more harm. She came to recognize that even the most hardened individuals in prison develop a sense of deep remorse and desire to make amends for past misdeeds when given the chance.

After a number of years of incarceration, Gary agreed to a meeting with Linda. Linda was eager for the meeting, but wondered if she would be capable of showing Gary the same compassion that she had

shown to countless other incarcerated individuals with whom she had no personal history.

When Linda and Gary finally met, Linda found that he was no longer the child who had callously raped and killed her daughter. Gary was a different person – a remorseful grown man who was desperately seeking both forgiveness and a chance to start making up for all of the hurt that he had inflicted. Linda, true to her nature, was more than willing to grant Gary forgiveness, and he eventually earned the second chance he so desperately wanted.

Gary has been out of prison for nearly six years. In that time, he has immersed himself in a new community, found and held a job, and begun working with drug and alcohol addicts at his church in a role in which his minister says he has made an incredible difference. Gary has kept himself out of trouble. He and Linda remain in contact, and he never stops apologizing for the pain that he caused. To Linda, Gary is a perfect example for why life sentences are so unjust, especially for children.

Linda believes that the retroactive resentencing of juvenile offenders is necessary, not only to uphold the Constitution, but also to provide the opportunity for restorative justice for which she passionately advocates. Had Gary served life without the possibility of parole, he would never have been able to become a living memorial to Cathy. "Cathy," Linda says, "would be gratified to see Gary have a second chance." Forgiving Gary and

witnessing his release and second chance at life inspires Linda's support of *Miller* retroactivity.

Glen Mitchell

Fourteen-year-old Jeff Mitchell was Glen Mitchell's first born son. On November 4, 1993, Jeff was sitting outside the library at Terry Parker High School in Jacksonville, Florida, waiting for his dad to pick him up following a school function. While waiting, Jeff was approached by four people – Omar Jones, Ellis Curry, Edward Goodman and Marlon Hawkins – who demanded his money. When Mitchell said "no" to the demand, 18-year-old Omar Jones, pulled a gun and shot Mitchell twice – once in the hip and once in the head. Glen arrived at the school just after the shooting and cradled his bleeding son. Jeff was taken to a hospital and died the next morning.

Prior to their sentencing, Glen and his wife, Margaret, requested a chance to interview the two youngest offenders in order make a recommendation for sentencing after both boys agreed to plead guilty. One of the boys, 16-year-old Ellis Curry, immediately showed remorse for what had happened. That remorse led the Mitchells to recommend leniency for him. As a result, Ellis was sentenced to 15 years in prison. Although Glen did not forgive Ellis initially, he remained curious about how he was doing in prison and what type of adult he had become.

In the early 2000s, as the murder rate in Jacksonville was escalating, a commission was

formed to study ways to reduce violence in the community, and Glen became a member of that committee. One day, a local pastor who regularly attended the committee meetings and was aware of Glen's curiosity about Ellis, mentioned that Ellis had been released and was back in Jacksonville. The pastor suggested that Ellis' story might be worth presenting to the committee.

Glen contacted Ellis' probation officer and arranged a meeting. After the two met, Ellis agreed to speak to the committee. At that meeting, Ellis described growing up without a father but with a loving and very permissive mother. He told the committee members how he began carrying a gun at the age of 12, and how he embraced the "thug life" he had seen on television and in the movies and heard about in the lyrics of songs. He told the committee that prison saved his life and how he now was able to take advantage of his second chance. Ellis' words had a very powerful impact on all of the committee members – and especially on Glen.

In 2010, while Glen was preparing for a presentation at a program entitled, "Turning Point: Rethinking Violence," Ellis, who was also a speaker, walked in. At that moment, Glen realized that, at some point along the way, he had forgiven Ellis. Glen recalls that reaching that point was a big step for him and that he believes Jeff would have wanted him to forgive Ellis.

Glen and Ellis have remained in contact and speak together regularly at events on preventing

violence. Glen says that Ellis was remorseful from the moment he first met him, and remains so today. He also says Ellis is unquestionably a productive member of society, and he firmly believes that he and his wife did the right thing in asking for leniency. "If you take away their hope, they are lost forever," says Glen. Accordingly, Glen supports the retroactive application of *Miller* so that those who took a life as a child have a chance to redeem themselves and become productive members of society, just as Ellis did.

Azim Khamisa

Tariq Khamisa was a 20-year-old college student at San Diego State University with a caring family, a beautiful fiancée, a bright future, and a love for life. On the night of January 21, 1995, Tariq was delivering pizzas when he was robbed, shot and killed by 14-year-old Tony Hicks. Tony, then an 8th grader in junior high school, killed Tariq on the orders of an older gang leader, simply because the gang was hungry and had no money.

Tony pled guilty to first degree murder and was sentenced to 25 years to life in an adult prison.

Tariq was the only son of Azim Khamisa, a former investment banker who grew up in Kenya, was educated in England, and later moved to the United States. After his son's death, Azim was very angry, but his anger was not directed towards his son's 14-year-old killer. In fact, Azim was able to forgive Tony for killing Tariq. "From the onset, I saw victims on both ends of the gun. I will mourn

Tariq's death for the rest of my life. Now, however, my grief has been transformed into a powerful commitment to change. Change is urgently needed in a society where children kill children."

Determined to honor his son, and his son's love for life, Azim established the Tariq Khamisa Foundation ("TKF Foundation"), which focuses on crime prevention, stopping youth violence and developing at risk youth into productive members of the community through education, mentorship and community service programs. Shortly after the TKF Foundation was established, Azim contacted Ples Felix, Tony's grandfather and guardian, and asked him to work at the TKF Foundation. Azim and Ples have served together on the board of the TKF Foundation for the past 20 years.

In addition to the many other youthful offenders that Azim has met through his work with the TKF Foundation, Azim has been in regular contact with Tony, who has since passed his GED in the 94th percentile and is only 12 units away from a degree in Child Psychology.

Tony has a potential parole date in 2018. Azim has invited Tony to work with him and his grandfather at the TKF Foundation upon his release from prison, to "join in the quest to prevent other kids from going down the same path." Azim believes that his experience with Tony is indicative of the potential in other child offenders, remarking that "all offenders, even the most hardened, have

something of value within them. We can turn these kids around."

Azim is sympathetic to families that argue they will experience retraumatization if *Miller v. Alabama* is applied retroactively. Yet, he believes many families like him can and do move on in life with greater peace knowing the person who killed their loved one has a chance to be meaningfully rehabilitated and returned to society one day, as opposed to languishing in prison.

Bill Pelke

On May 14, 1985, Ruth Pelke, a 78-year-old grandmother fondly known as Nana, was brutally murdered when four teenage girls gained access to her home in search of money for the local arcade. Knowing Ruth gave Bible lessons in her home to children in the neighborhood, the girls arrived at her front door under the pretext of wanting a Bible lesson. As Ruth reached for her Bible teaching materials, one girl hit Ruth over the head with a vase. Paula Cooper, 15, then proceeded to stab Ruth to death – inflicting 33 stab wounds. Once they had killed Ruth, the girls absconded with a mere $10 and the keys to Ruth's old car.

Bill Pelke, Ruth's grandson, was a father of children of similar ages to the assailants. Shocked by this senseless murder, he found it particularly difficult to comprehend how these children could so grievously harm a defenseless older woman. When prosecutors sought the death penalty for Paula and one other girl, Bill's family did not question the

recommendation. At the time, Bill thought that the death sentence was appropriate because, as long as it was the law, "his grandmother deserved that her murderers should receive death."

However, just a few months after Paula was sentenced to death, Bill realized that the death penalty was not the right response to the murder of a woman with a tremendous faith in God. He became convinced that his grandmother would have wanted him to show more compassion, even to her murderers. In fact, Bill was so certain of this that he wrote to Paula the next day and immediately began petitioning for a sentence for Paula that he felt his grandmother would approve. After three years of campaigning and gathering the support of two million petitioners, Paula's sentence was reduced to 60 years, with an early release after 30 years for good behavior.

During her time in prison, Bill had regular contact with Paula – he wrote to her every 10 days while she was on Death Row. Although he wanted to visit Paula immediately, he was not permitted to do so until Thanksgiving of 1994 – eight years after Ruth's murder. He described the meeting as "wonderful." "Wonderful to have been able to face Paula, and not have the hate, anger and desire for revenge that it would have been so easy to have had, but to have the kind of love and compassion that I feel God wants us to have for all of his creation."

Bill saw Paula mature over the years; she received a GED and a college degree and wanted to

help others who have suffered a life like hers. She expressed her remorse to Bill in her many letters and in their meetings. Bill knows of Paula's abusive childhood and still is saddened by the fact that neither of her parents was in court on the day that she was sentenced.

As a result of attaining her GED and college degree, Paula was released in July 2013. However, the conditions of her parole – for which Bill was not asked to provide input – dictated that she could not make contact with him for two years after her release. While Bill was anxiously waiting to welcome her back into the world, he was heart-broken to learn that Paula committed suicide in May of 2015. Paula left behind suicide notes expressing her deep remorse for the murder she committed 30 years prior.

Bill is devastated that he was not able to be there for her and could not continue to express his forgiveness during the past two years. He believes that being able to talk to her may have helped her deal with her feelings of guilt. According to Bill, Paula's story is a testament to the negative consequences of the overly punitive treatment of incarcerated individuals, even after their release.

Bill feels forgiveness has an immense healing power for all involved in a tragedy, including victims and perpetrators. Now more than ever, Bill strongly believes that children can be reformed, and that, accordingly, they should be retroactively eligible for a chance at parole under *Miller*.

Aqeela Sherrills

January 10, 2015 marked the eleventh anniversary of the day Aqeela Sherrills' teenaged son, Terrell, was murdered by another teenager at a party in an upscale Los Angeles neighborhood. April 28, 2015 marks the twenty-third anniversary of a historical peace treaty that Aqeela brokered between two rival Los Angeles street gangs. These two anniversaries represent sorrow and hope; they have shaped Aqeela's views against life imprisonment for children – even for the teenager who murdered his son.

Home for winter break from studying theater arts at Humboldt State University, Terrell was shot in the back by a 17-year-old while speaking to one of his friends at a party. Terrell's killer was quickly identified through the street network but not arrested. Aqeela later shocked everyone when, in addressing the nation on the "America's Most Wanted" television show, he said he did not want Terrell's teenaged killer to spend the rest of his life in prison. Rather, Aqeela wanted to meet the killer, and he wanted to be sure the killer received appropriate care while carrying out his sentence. Aqeela reiterated to the police, to family and to friends that his primary concern was getting the perpetrator the help that he needed to heal.

Aqeela had been opposed to life without parole for children even before Terrell's death. Coming of age in the Watts neighborhood of south-central Los Angeles, he began working to end gang conflict as a young man. A one-time gang member himself,

Aqeela understood how and why young gang members turn to violence. "My friends and I had been living under a set of unwritten rules. Most of us hadn't really understood what we were doing. We were just following them because if we didn't, there would be consequences." These "rules" about loyalty, love and revenge caused the smallest conflict to lead to the ultimate violence – violence that should have been preventable. Aqeela knew personally that "sexual, physical or psychological abuse" affects a child's ability to cope, because he had experienced all of these himself. For Aqeela, the only way to confront adolescent criminal activity is to focus on healing those wounds and changing people's attitudes about adherence to those "rules."

Aqeela knows such change can be accomplished because he has done it himself. He was the driving force behind brokering a 1992 peace treaty between the Los Angeles Bloods and Crips street gangs. The landmark agreement was made possible, he says, in large part by former gang members that had served time in prison for homicide and other violent crimes, been rehabilitated, and then returned to their communities as living arguments for peace. "They were able to come back and convince others." From this and other similar experiences, Aqeela has seen that youth can redeem themselves and then play critical roles in redeeming their communities.

To Aqeela, a life sentence without the possibility of parole for a 17-year-old is unjust. He recognized that his son's killer, while having

committed a heinous crime, is still a person who could contribute positively to his community. "The community cannot afford to lose another child. It is imperative that we give people, especially children, a second chance and the opportunity to redeem themselves." Why destroy two lives? There is a smarter way to deliver justice."

Aqeela acknowledges that some families of victims say they find closure in seeing life sentences without the possibility of parole. He implores them to "stay in the fight." He explains that if the boy that murdered his son had been found and sentenced to life in prison without the possibility of parole, he would feel as if he and his community were being "punished twice." "It doesn't bring back my son. It doesn't bring me closure. I don't know how it benefits us for me as an individual or us as a culture. It doesn't solve the problem."

Mona Schlautman

On October 8, 1992, 15-year-old Jeremy Drake was picked up by his 17-year-old friend, Jeremy Herman, and 19-year-old Christopher Masters. Herman's car stereo speakers had been stolen, and he believed that Drake knew where they were. Herman intended to use Masters' gun to scare Drake into revealing who had stolen the speakers, and Masters asked to come along for the ride. After driving around for several hours, during which time Herman and Masters brutally beat Drake, Herman pulled into a park, and Masters led Drake up a path and shot him. Herman pled guilty to kidnapping and was sentenced to life in prison. Masters was also

sentenced to life for the offense of first degree murder.

A year and a half after Drake's murder, Mona Schlautman, his mother, told Herman at his sentencing that she forgave him. She recalls that "I was angry and I was upset, but just because of my own personal spiritual growth, I knew right away I needed to forgive – if not for him, for my own sake." She also recalls praying for both Herman and Masters.

After the sentencing, Mona tried to contact Herman but had no success. Herman did the same but was unsuccessful until, through a private investigator, they connected and began exchanging letters around 2004. Mona met with Herman in 2005, and they continued communicating by letters and phone calls, allowing Mona to observe, firsthand, Herman's growth and progress. He went from a deeply-troubled dropout to someone Mona regards as a well-read and intelligent man. "He wrote me beautiful letters, repeatedly expressing his sorrow, and telling me that going to prison saved his soul."

Mona believes all youth should have a chance at parole, and Mona supported Herman's release. She testified before the Pardon's Board several times in support of a reduction in Herman's sentence. While Mona readily admits that the wounds of losing her son have never healed, and that some of those wounds will always be raw, she also believes that her own pain does not justify keeping Herman in jail

for the rest of his life. Ultimately, Herman's original life without parole sentence was reduced to 40 years in prison. When Herman was released in 2012, Mona was there to greet him.

Reacting to the reduced sentence, Mona said she believed "he needed a chance at life. I couldn't discount what he had done, but he deserved a chance." Mona remarks that she "got a sense of joy out of helping" Herman, and that she chose to live her life with that mindset rather than the mindset of bitterness and anger.

To Mona, the best thing that Herman can do to make up for what he did is to come out and turn his life around. As a prisoner, he remains a burden on taxpayers. He owes it to society to become a responsible, productive adult instead. "I'm glad he went to prison, I'm glad he did time, and I'm glad he got out." Mona believes that all children should receive a second chance at life like Herman, and therefore supports the retroactive application of *Miller*.

Mary Johnson

"Who did he think he was that he could take my child's life? I hated him, truly hated him." Mary Johnson recalls her feelings when she first learned that 16-year-old Oshea Israel had murdered her only child, 20-year-old Laramiun Byrd, on February 12, 1993 in Minneapolis, Minnesota. Oshea, a member of a teenage gang, got into a fight with Laramiun at a house party, pulled a gun on Laramiun, and shot and killed him.

Mary attended every court appearance and wanted nothing less than for Oshea to be "caged up like the animal he was" for the rest of his life. She even recalls Oshea turning to look at her in the court room and smiling as if to say "Yes, I killed your son. What are you going to do about it?" Mary's anger was further fueled when the judge lowered Oshea's first-degree murder charge to second-degree murder. Oshea was tried as an adult, and sentenced to twenty-five-and-a-half years.

Searching for answers on how to heal, Mary founded "From Death to Life," an organization dedicated to ending violence through healing and reconciliation between families of victims and perpetrators. Through that organization, Mary counsels parents whose children have been killed, as well as families of murderers. Mary soon realized that her failure to forgive was "like a cancer that eats you from the inside," and that if she wished to heal, she needed to meet her son's killer.

Mary reached out to Oshea who agreed to meet her. But when the day of the visit came, half way up the ramp to Stillwater Prison, Mary was suddenly overcome with doubt and told her support team that she could not do it. Physically and emotionally, Mary had to be pushed up the ramp into Stillwater Prison and toward her son's killer. Overwhelmed by emotion, Mary began to fall and it was Oshea who caught her. He then said to her, "Ma'am, I believe you're gonna be the person to help me to cry." For Mary, "the anger and bitterness was

over. I just knew it. I had reached the point of total forgiveness."

Oshea was released on March 7, 2009, after serving sixteen years of his sentence. It was Mary's organization that hosted a homecoming celebration for Oshea and his family. And it was Mary who introduced Oshea to her landlord so he could invite Oshea to move in next door to her. Now Mary and Oshea not only share a porch, but a bond so strong that Mary considers him to be her "spiritual son," and he sees Mary as his second mother.

Since his release from prison, Oshea now joins Mary at these speaking engagements at Stillwater Prison. They also regularly travel around the nation speaking at various functions to a wide range of audiences, including the 2011 Wisconsin Restorative Justice Conference.

It is significant to Mary that, like Laramiun, Oshea was intelligent, but fell in with the wrong crowd and was involved in drug dealing. A child of divorced parents, Oshea was torn between the well-disciplined path of his mother and minister step-father, and the urge to rebel to fit in with his father's side of the family. Mary believes this inner struggle continued even when Oshea got to prison. But once he started meeting with Mary, he started the process of accepting responsibility for his actions and forgiving himself. And, to Mary, that is what justice should focus on – giving the offender the chance to reform. Mary supports the retroactive application of *Miller* to those incarcerated for crimes committed as

children: "What does it achieve to lock them all up for their entire lives? If they don't have a chance to reform and heal and to show others how to learn from their mistakes, there's no hope for anybody."

Ronald Simpson

Ronald Simpson lost his only son on Father's Day in 2001, when he was killed by a 14-year-old boy, Russell Smith. Ronald's son had a girlfriend whose mother opposed her daughter's relationship. Under the incorrect impression that Ronald's son had been physically abusive to her daughter, she asked Russell to find him and "defend his sister." Doing as he was told, Russell confronted Ronald's son, and shot him. Ronald was devastated at the loss of his son, but he knew firsthand what it meant to be in prison and how people can turn their lives around. So, from the beginning he advocated against a sentence of life in prison for his son's killer. Ronald's sentiments were ultimately honored, as Russell was sentenced in juvenile court to serve time until he reached the age of 21, assuming he exhibited rehabilitation and met various other requirements.

Ronald recognized that, at the time of the crime, this young man had been a 14-year-old boy trying to please his mother and "defend his sister," with little grasp for the severity of his actions. When Ronald initiated communication with him, Russell immediately expressed remorse. When Russell's case was reviewed after seven years, Ronald supported release because Russell had undergone significant change while incarcerated and

deserved a second chance at life. The court released the young man, and he and Ronald remain in touch.

Ronald always understood that "it would serve no purpose for [the boy] to serve life in prison." Sending a child to prison for life would only bring more harm to him, his family and the community. Instead, he believes rehabilitating and reintegrating youth into society serves a beneficial purpose to them and their communities. Thus, he supports applying *Miller* retroactively. While he believes that everyone who commits a serious crime must be held accountable, he thinks "we must seek accountability that makes sense."

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court hold that *Miller v. Alabama* must be applied retroactively.

Respectfully submitted,

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